



4191-02U

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007-0040]

20 CFR Part 404

RIN 0960-AG50

Sixty-Month Period of Employment Requirement for Government Pension Offset Exemption

AGENCY: Social Security Administration (SSA)

ACTION: Final rule.

SUMMARY: This final rule adopts, with clarifying changes, the proposed rule we previously published in the Federal Register on August 3, 2007. This final rule revises our Government Pension Offset (GPO) regulations to reflect changes to the Social Security Act (“Act”) made by section 9007 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) and section 418 of the Social Security Protection Act of 2004 (SSPA). These regulations explain how and when we will reduce the Social Security spouse's benefit for some people who receive Federal, State, or local government pensions if Social Security did not cover their government work.

DATES: This final rule is effective on (insert date 30 days after date of publication in the FEDERAL REGISTER).

FOR FURTHER INFORMATION CONTACT: Sylvia Diaz, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-1981. For information on eligibility or filing benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at www.socialsecurity.gov.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the GPO in 1977 to reduce the Social Security spouse's benefit of workers who receive a government pension based on noncovered employment. A Social Security spouse's old-age benefit is a benefit that, under certain circumstances, the spouse, widow(er), mother, father, divorced spouse, or surviving divorced spouse of an insured person is entitled to receive. Congress created spouse's benefits to help people who depend on their working spouses for financial support, either because they did not work or did not work long enough to be entitled to their own Social Security retirement benefit.

Spouse's benefits are separate from the Social Security retirement benefits earned based on an individual's own earnings record. We base a spouse's benefit on the Social Security earnings record of an individual's current, deceased, or former spouse. The GPO does not apply to Social Security retirement or disability benefits that we base on an individual's own earnings.

Under the Social Security program, an individual who is entitled to more than one Social Security benefit at the same time does not receive the full amount of each benefit. For example, an individual who worked and paid Social Security taxes may be eligible for a retirement benefit based on his or her own earnings and may also be eligible for spouse's benefits based on another person's earnings. In this case, if the spouse's benefit is greater than the individual's retirement benefit, we will reduce the spouse's benefit by the amount of the individual's own retirement benefit. Therefore, the individual's own retirement benefit "offsets" the benefit amount paid as a spouse.

In certain instances, an individual may earn wages but not pay Social Security taxes. We call this noncovered work. This situation exists for some Federal, State, and local government employees who contributed to a government-employee pension plan and receive a government pension. Since these individuals did not pay Social Security taxes on their noncovered employment, they are not eligible for Social Security retirement benefits based on that work. However, they may be eligible for Social Security spouse's benefits.

Congress believed that individuals who received a government pension based on their own noncovered work would receive a "windfall" if they also received Social Security spouse's benefits that their government pension did not offset.¹ To prevent this "windfall," Congress passed the GPO provision in 1977.² The GPO treats government workers similarly

¹ See S. Rep. No. 95-572, at 28 (1977).

² Public Law 95-216, 91 Stat. 1509 (1977); see 42 USC 402(k)(5)(A).

to individuals who worked in jobs that Social Security covered by reducing their Social Security spouse's benefit when they receive a government pension based on their own noncovered work.

Under the 1977 law, the GPO did not apply if Social Security covered the person's last day of government employment. The wording of this law allowed an individual to spend an entire career in a noncovered job and avoid the GPO by working in a covered job for only 1 day. To close this "last day loophole," Congress enacted section 418 of the SSPA, Public Law 108-203, which amended the GPO provision of the Act. This amendment, made by section 418, requires that an individual's final 60 months of government work must be covered by both Social Security and the pension plan that provides the government pension in order to be exempt from the GPO. This amendment also phased out the "last day" loophole and provided a transitional rule that covered people whose last day of government employment occurred within 5 years of the enactment of SSPA.

For workers whose last day of State or local government employment occurred between March 2, 2004 and March 1, 2009, we will reduce the 60-month requirement by the total number of months that the worker served in covered employment on or before March 2, 2004. The worker must perform the remaining month(s) of service needed to fulfill this 60-month requirement after March 2, 2004. Therefore, even if a worker had 60 or more months of covered government service on or before March 2, 2004, that worker would still have to work his or her last month of covered government service after March 2, 2004.

The last 60-month requirement established by section 418 of the SSPA is similar to a requirement established by section 9007 of the OBRA 1987, Public Law 100–203. Section 9007 specified that Federal employees who transfer from the Civil Service Retirement System to the Federal Employees Retirement System must work for at least 60 months, taken together, in covered employment in order to avoid application of the GPO.

On August 3, 2007, we published an NPRM in the Federal Register at 72 FR 43202 proposing to revise our regulations to reflect the changes to the GPO made by section 418 of SSPA and section 9007 of the OBRA 1987. We are finalizing the changes announced in the NPRM, with the modifications noted below.

Changes to Language Proposed in NPRM

We re-worded and reorganized the proposed regulatory language to better explain how we apply the GPO rules. These changes make the regulations clearer and easier to understand. The language changes do not affect the substance of the regulation as proposed in our NPRM.

In the NPRM, we proposed replacing the words "receiving" and "received" with the word "payable." We decided against this change. Variations of the term "receive" more clearly describe the fact that a government pension plan must pay a person a periodic benefit from for GPO to apply. Additionally, use of the term "receive" in this section maintains consistency throughout our regulations.

We simplified the language in proposed 404.408a(a)(1), and redesignated the section as 404.408a(a)(2). We redesignated proposed 404.408a(a)(1) as (a)(2) because we are adding a new 404.408a(a)(1). In the proposed rules, we used the terms “government pension” and “noncovered employment” without a definition. We also referred to an individual’s “Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse” throughout proposed 404.408a(a), as well as in proposed 404.408a(b) and (d).

To simplify and clarify the rules, we added a definitional paragraph to 404.408a(a) for these terms. We defined the terms government pension and noncovered employment in 404.408a(a)(1)(i) and (a)(1)(ii) and added 404.408a(a)(2)(iii) to define "spouse's benefits," which is a single term used to represent those beneficiaries affected by this section: wives, husbands, widows, widowers, mothers, fathers, divorced or surviving divorced spouses. Using a single term to describe these groups simplifies our rules and makes them easier to understand. The addition of these terms does not change or affect the categories of beneficiaries affected or change the substance of the rules we proposed.

We simplified the language in proposed 404.408a(a)(3) and moved it to 404.408a(b)(6), except for the final sentence of (3)(ii).

We revised the final sentence of proposed 404.408a(a)(3)(ii) and moved it to 404.408a(a)(2).

We simplified the first sentence of proposed 404.408a(a)(4) and moved it to 404.408a(b)(6)(ii) to clarify that it applies to the last 60 months rule.

We simplified the second sentence of proposed 404.408a(a)(4) and moved it to 404.408a(a)(1)(ii) to clarify that it applies to all of §404.408a.

We simplified the language of proposed 404.408a(d) and added provisions from proposed paragraph 404.408a(a)(5).

We revised the language of proposed 404.408a(b)(6) and moved it to 404.408a(b)(7).

We simplified formerly proposed 404.408a(a)(2) and moved it to 404.408a(b)(8) as a new exception.

Public Comment

On August 3, 2007, we published an NPRM in the Federal Register at 72 FR 43202 and provided the public with a 60-day comment period. We received one comment. We carefully considered the concerns expressed in this comment but did not make any changes to the final rule as a result of the comment.

Comment: A member of the public objected to the GPO, stating that government pensions are already larger than private pensions. The commenter opined that people who receive government pensions should not get extra payments since they already receive more than workers who lack pensions.

Response: We did not adopt this comment, which reflects a misunderstanding of the GPO. The GPO does not increase government pensions and it does not increase Social Security benefits. Instead, it reduces the Social Security spouse's benefit of workers who receive a government pension based on noncovered employment. Because our current regulations reflect the purpose of the GPO, people who receive government pensions are not receiving extra payments.

Regulatory Procedures

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and was not subject to OMB review.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule imposes no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

Dated: June 5, 2015.

Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR chapter III, part 404, subpart E as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE
(1950--)

Subpart E – Deductions; Reductions; and Nonpayments of Benefits

1. The authority citation for subpart E of part 404 is revised to read as follows:

AUTHORITY: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 424a, 425, 902(a)(5), and 1320a–8a); 48 U.S.C. 1801.

2. Amend § 404.408a by revising paragraph (a), adding paragraphs (b)(6) through (8), and revising paragraph (d) to read as follows:

§ 404.408a Reduction where spouse is receiving a government pension.

(a) General—(1) Terms used in this section. (i) Government pension means any monthly periodic benefit (or equivalent) you receive that is based on your Federal, State, or local government employment.

(ii) Noncovered employment means Federal, State, or local government employment that Social Security did not cover and for which you did not pay Social Security taxes. For the purposes of this section, we consider your Federal, State, or local government employment to be noncovered employment if you pay only Medicare taxes.

(iii) Spouse's benefits are Social Security benefits you receive as a wife, husband, widow(er), mother, father, divorced spouse, or surviving divorced spouse.

(2) When reduction is required. We will reduce your spouse's benefit for each month that you receive a government pension based on noncovered employment, unless one of the exceptions in paragraph (b) of this section applies. When we consider whether you receive a government pension based on noncovered employment, we consider the entire month to be a month covered by Social Security if you worked for a Federal, State, or local government employer in a position covered by Social Security for at least 1 day in that month and there was no noncovered employment that month under the same pension plan.

(b) * * *

(6) If you are receiving a government pension and the last 60 months of your government employment were covered by both Social Security and the pension plan that provides your government pension.

(i) If the last day of your government employment was after June 30, 2004 and on or before March 2, 2009, we will apply a transitional rule to reduce the last 60-month requirement under the following conditions:

(A) You worked 60 months in Federal, State, or local government employment covered by Social Security before March 2, 2004, and you worked at least 1 month of covered government employment after March 2, 2004, or

(B) You worked fewer than 60 months in government employment covered by Social Security on or before March 2, 2004 and you worked the remaining number of months needed to total 60 months after March 2, 2004. The months that you worked before or after March 2, 2004 do not have to be consecutive.

(ii) We will always reduce your monthly spouse's benefit if you receive a government pension based on noncovered employment and you later go back to work for a Federal, State, or local government, unless:

(A) Your final 60 months of Federal, State, or local government employment were covered by Social Security; and

(B) Both your earlier and later Federal, State, or local government employment were under the same pension plan.

(7) If you are a former Federal employee and you receive a government pension based on work that included at least 60 months in employment covered by Social Security in the period beginning January 1, 1988 and ending with the first month you became entitled to spouse's benefits, whether or not the 60 months are consecutive), and:

(i) You worked in the Civil Service Retirement System (CSRS), but switched after 1987 to either the Federal Employees Retirement System (FERS) or the Foreign Service Pension System; or

(ii) You worked in the legislative branch and left CSRS after 1987 or received a lump sum payment from CSRS or another retirement system after 1987.

(8) You were a State or local government employee, or a Federal employee who worked in the CSRS but switched to the FERS before 1988, your last day of service was in covered employment, and

(i) You filed for spouse's benefits before April 1, 2004 and became entitled to benefits based on that filing, or

(ii) Your last day of service was before July 1, 2004,

* * * * *

(d) Amount and priority of reduction—(1) Post-June 1983 government pensions. (i) If you became eligible for a government pension after June 1983, and you do not meet one of the exceptions in paragraph (b) of this section, we will reduce (to zero, if necessary) your monthly Social Security spouse's benefits by two-thirds of the amount of your government pension.

(ii) If you earned part of your pension based on employment other than Federal, State, or local government employment, we will only use the part of your pension earned in government employment to compute the GPO.

(iii) If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

(2) Pre-July 1983 government pensions. (i) If you became eligible for a government pension before July 1983, and do not meet one of the exceptions in paragraph (b) of this section, we will reduce (to zero, if necessary) your monthly Social Security spouse's benefits as follows:

(A) By the full amount of your pension for months before December 1984; and

(B) By two-thirds the amount of your monthly pension for months after November 1984.

(ii) If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

(3) Reductions for age and simultaneous entitlement. We will reduce your spouse's benefit, if necessary, for age and for simultaneous entitlement to other Social Security benefits before we reduce it because you are receiving a government pension. In addition, this reduction follows the order of priority stated in §404.402(b).

(4) Reduction not a multiple of \$1.00. If the monthly benefit payable to you after the required reduction(s) is not a multiple of \$1.00, we will reduce it to the next lower multiple of \$1.00 as required by §404.304(f).

(5) Lump sum payments. If the government pension is not paid monthly or is paid in a lump sum, we will allocate the pension on a basis equivalent to a monthly benefit and then reduce the monthly Social Security benefit accordingly.

(i) We will generally obtain information about the number of years covered by a lump-sum payment from the pension plan.

(ii) If one of the alternatives to a lump-sum payment is a life annuity, and we can determine the amount of the monthly annuity, we will base the reduction on that monthly amount.

(iii) If the period or the equivalent monthly pension benefit is not clear, we may determine the reduction period and the equivalent monthly benefit on an individual basis.

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